IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

SA.No. 536 of 1994

(AS.81/1991 of SUB COURT, KASARAGOD
OS.104/1988 of PRL.MUNSIFF'S COURT, KASARAGOD)

APPELLANT/RESPONDENT/PLAINTIFF :

K.P. KUNHAMBU NAIR,
AGED 54 YEARS, S/O. LATE K. CHATHU NAIR,
HINDU LANDHOLDER RESIDING IN NIDUGUI HOUSE,
KUTTIKOLE VILLAGE, KASARAGOD TALUK,
P.O. VATTANTHATTA,
VIA. MULIYAR.

BY ADV. SRI.M.K.S. MENON

RESPONDENT/APPELLANT/DEFENDANT:

K.P. MADHAVAN NAIR, AGED 59 YEARS,
S/O. AMMARKUNHI AMMA,
HINDU LANDHOLDER RESIDING IN
DOOR NO. 2/129, THAYATHA VEEDU,
KANATHUR, MULIYAR VILLAGE,
KASARAGOD TALUK, P.O. KANATHUR.

BY BY ADV. SRI.G.UNNIKRISHNAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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S.A. No. 536 OF 1994

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Dated this the 22nd November , 2007

J U D G M E N T

The appellant herein filed O.S. No.104 of 1988 on the file of the court of the Munsiff, Kasaragod against the respondent claiming damages for malicious prosecution. The trial court partly decreed the suit and granted a decree for realisation of an amount of Rs. 1250/- as damages. The defendant challenged the judgment and decree of the trial court before the court of the Subordinate Judge, Kasaragod in A.S.No. 81 of 1991. The plaintiff filed a memorandum of cross objection challenging that part of the judgment and decree by which the claim for compensation was not decreed fully. The lower appellate court allowed the appeal filed by the defendant and set aside the judgment and decree of the trial court. The plaintiff has thus filed the Second Appeal. The parties are hereinafter referred to as plaintiff and defendant.

2. The plaintiff and defendant are members of the same tarwad. The tarwad owns a temple, 'Kottaram ' and 'Kalari' . There are three 'thavazhies' in tarwad. As per the scheme framed in a suit for partition of the tarwad properties, each thavazhy has the right of management of the temple and shrines on rotation basis. Each thavazhy was put in management for a period of three years. The defendant was the seniormost member of his thavazhy. His term of management expired on 28.11.1985. Alleging

that the defendant started collecting money and offerings from the devotees even after his period of managment was over, Exts. A4 and A5 publications were made in 'Udayavani ' news paper and 'Utharadesam 'daily . In the said publications, it was mentioned that the defendant was unauthorisedly collecting money and offerings from the devotees and he had no right to do so. The publications were made in the name of K.P. Kelu Nair , the seniormost member of the plaintiff's Thavazhy.

3. Alleging that Exts. A4 and A5 publications were defamatory, the defendant instituted a complaint before the criminal court against Kelu Nair**,** plaintiff herein and the printer and publisher of the dailies wherein Exts. A4 and A5 publications were made. It would appear that the criminal case was compounded against the printer and publisher of the dailies. Kelu Nair died. Even thereafter, the criminal case was continued against the plaintiff. The defendant/complainant absented himself on several occasions before the criminal court. The criminal court acquitted the accused (plaintiff herein) under section 256(1) of the Code of Criminal Procedure as per order dated 15.10.1987.

4. The suit was filed by the plaintiff claiming damages for malicious prosecution. He alleged that the complaint was filed by the defendant without any reasonable and probable cause and maliciously. It was contended that because of the prosecution, the plaintiff suffered mental agony and he had to unnecessarily incur expenditure. It was alleged by the plaintiff that the defendant had sent letters to the devotees demanding amounts. Those letters were produced before the court. The defendant disputed his

handwriting and signature in those letters. The trial court directed the defendant to give specimen handwriting and signature before the court. The trial court compared the admitted handwriting and signature of the defendant with the disputed ones and came to the conclusion that the handwriting in the disputed letters do not tally with that of the defendant . However, the trial court held that there is some similarity in the signature. A contention was put forward by the plaintiff that the publication being made by Kelu Nair, there was no justification in making the plaintiff as accused in the criminal case. The trial court which referred to certain averments in the written statement of the defendant and his evidence, came to the conclusion that even according to the defendant, the plaintiff was not responsible for the publications. On that finding the trial court held that the plaintiff is not called upon to prove the truth or otherwise of the allegations made against the defendant in the publications. After analysing the evidence, the trial court came to the conclusion that the plaintiff has proved that the criminal law was set in motion by the defendant without reasonable and probable cause. The trial court also came to the conclusion that the expenditure incurred by the plaintiff to conduct the criminal case could be estimated at Rs. 250/- . A sum of Rs. 1,000/- was fixed as compensation for mental agony caused due to the continuance of the criminal case against the plaintiff and thus a total sum of Rs.1250/- was decreed by the trial court with future interest at 6% per annum. The appellate court adverted to the pleadings and evidence of the parties and came to the conclusion that the view taken by the trial court that the written statement of the defendant and his evidence

would indicate that the publication was made by Kelu Nair alone is not fully correct. The appellate court adverted to the evidence and came to the conclusion that the defendant's case was that the publication was made by Kelu Nair at the instance of the plaintiff. The averments in the plaint would also indicate that the case of the defendant all throughout was that the publication was made at the instance of the plaintiff. The appellate court held on the aforesaid finding that the trial court was not justified in holding that it was not necessary for the plaintiff to establish the correctness of the allegations made against the defendant in Exts. A4 and A5. On consideration of the facts and circumstances of the case and the evidence on record, the court below came to the conclusion that the plaintiff failed to establish the allegations levelled against the defendant in Exts. A54 and A5. It was held that the plaintiff failed to prove that the defendant acted without reasonable and probable cause .

5. On the aforesaid findings, the appellate court held on facts that the plaintiff failed to establish the necessary ingredients to found a claim for compensation for malicious prosecution. The principles of law governing a suit for malicious prosecution were rightly comprehended by the lower appellate court and on the basis of the pleadings, facts and circumstances of the case and the evidence on record, it came to the conclusion that the plaintiff failed to establish the necessary ingredients for proving a claim for compensation for malicious prosecution. I am of the view that the findings rendered by the court below are finding of facts. There is no case that the appellate court omitted to take note of the relevant averments in the pleadings or any piece of

documentary or oral evidence. This court would not be justified in interfering with the findings of fact rendered by the court below, invoking Section 100 of the Code of Civil Procedure. No substantial question of law is established to be involved in the case. It is also not established that any question of law was decided erroneously by the lower appellate court. The parties are members of the same family. The plaintiff and the defendant were aged 52 years and 58 years respectively at the time of institution of the suit in 1988. They must be very old now. I am of the view that in the facts and circumstances of the case, a quietus to the litigations should be made at this stage. I do not find any ground to interfere with the judgment and decree of the lower appellate court . Second Appeal lacks merit and it is accordingly dismissed, however, without any order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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Dated this the 22nd November, 2007

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